

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists, and that the foregoing adoption of a regulation is necessary for an immediate action to avoid serious harm to the public peace, health, safety or general welfare, within the meaning of Government Code Section 11342.545 and Public Resources Code Section 21080. The Department does not have a record of any person requesting a notice of regulatory actions under Government Code Section 11346.4(a)(1). Therefore, the provisions of Government Code Section 11346.1(a)(2) do not appear to be applicable to this emergency action as no one has requested such notice. Further, the Secretary believes that this emergency clearly poses such an immediate, serious harm that delaying action to give the notice pursuant to Government Code Section 11346.1 or allow five calendar days to allow public comment pursuant to Government Code Section 11349.6 would be inconsistent with the public interest, within the meaning of Government Code Section 11349.6(b).

Specific Facts Showing the Need for Immediate Action

Oriental fruit fly is a destructive insect pest of innumerable commercial agricultural crops. Fruits (including nuts, dates, and berries), many kinds of vegetables, and the fruiting bodies of many wild and ornamental plants are known to be hosts or possible hosts of the Oriental fruit fly. Larval feeding reduces the interior of fruit to a rotten mass. Egg punctures admit decay organisms that cause tissue breakdown. Damaged fruit is generally unfit for human consumption. Movement of hosts infested with the larvae of the fly can artificially spread the fly.

Three adult male Oriental fruit flies were trapped in the Lakewood area of Los Angeles County on August 13, 2008. On August 15, 2008, two male Oriental fruit flies were trapped in the Lakewood area of Los Angeles County. On August 16, 2008, an adult male Oriental fruit fly was trapped in the Lakewood area of Los Angeles County. On August 18, 2008, two additional Oriental fruit flies were trapped in the Lakewood area of

Los Angeles County. The detection of multiple male Oriental fruit flies was indicative of an incipient infestation of Oriental fruit fly in the Lakewood area of Los Angeles County. As a result, effective August 25, 2008, Section 3423(b) was amended and established an approximate 74 square mile area surrounding the infestation in the Lakewood area of Los Angeles County as the area under quarantine for Oriental fruit fly.

On September 26, 2008 (California Pest and Damage Record (PDR) #1443024), an adult male Oriental fruit was trapped in the Lakewood area close to the epicenter of the known infestation. On October 2, 2008 PDR #1443076), another Oriental fruit fly was trapped to the Lakewood area but it was located approximately one mile to the southeast of the epicenter of the infestation. It is now necessary to expand the regulated area to the east and the south. The proposed regulated area will now include a portion of Orange County to the east.

Oriental fruit fly has been established in Hawaii, since 1946, where it is a major pest of agriculture, particularly on mangoes, avocados and papayas. Maggots have been found in over 125 kinds of fruits and vegetables in Hawaii alone. The introduction of this pest threatens numerous crops in California, including apples, apricots, avocados, cherries, citrus, figs, nectarines, peaches, pears, plums and tomatoes. It has been estimated that the cost of not eradicating Oriental fruit fly in California would range from \$44 to \$176 million in crop losses, additional pesticide use, and quarantine requirements. Oriental fruit fly has been introduced into California a number of times, through the movement of prohibited host fruits and vegetables into the State, and has been eradicated.

Females lay eggs in groups of 3 to 30 under the skin of host fruits and vegetables; the female can lay more than 1,000 eggs in her lifetime. Time taken for development depends on the ambient temperature. Larvae tunnel through the fruit feeding on the pulp, shed their skins twice, and emerge through exit holes in approximately 10 days. The larvae drop from the fruit and burrow 2 to 3 cm. into the soil to pupate. In 10 to 12

days, adults emerge from these puparia. The newly emerged adult females need 8 to 12 days to mature sexually prior to egg laying. Breeding is continuous, with several annual generations. Adults live 90 days on the average and feed on honeydew, decaying fruit, plant nectar, bird dung, and other substances. The adult is a strong flyer recorded to travel up to 30 miles in search of food and sites to lay eggs. Transport of fruit infested with eggs or larvae also allows the fly to spread artificially and infest new areas very quickly.

If the fly were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to increased pesticide use, decreased production of marketable fruit, and loss of markets if the United States Department of Agriculture or other states or countries enact quarantines against California products which can host and carry the fly.

The Oriental fruit fly has the capability of causing significant irreparable harm to California's agricultural industry and some possible adverse environmental impacts. While the Department's compliance with the California Administrative Procedure Act and the California Environmental Quality Act (CEQA) are separate actions, they can be interrelated. Although adoption of specific regulatory authority can be the beginning of a project and therefore covered by CEQA, this regulation, for the reasons already set forth, constitutes a specific act necessary to prevent or mitigate an emergency as authorized by Public Resources Code section 21080, subdivision (b) (4) and Title 14, California Code of Regulations Section 15269, subdivision (c). The regulation is also an action required for the preservation of the environment and natural resources as authorized by Title 14, California Code of Regulations, Sections 15307 and 15308.

The proposed quarantine area includes the initial detection sites and a buffer zone extending approximately 4-1/2 miles in each direction from each detection site. A buffer zone is necessary because the fly can spread naturally (as well as being spread artificially in infested hosts). The boundary was drawn jointly by the United States

Department of Agriculture, The California Department of Food and Agriculture, and the Agricultural Commissioners of Los Angeles and Orange counties, and the proposed quarantine area is considered the minimum area around the initial detection sites which should be regulated to prevent artificial spread of Oriental fruit fly to noninfested areas.

The immediate implementation of this proposed regulatory action is also necessary to prevent the USDA from considering the entire state as infested with Oriental fruit fly. Additionally, the USDA is in the process of revising a federal domestic regulation and cannot regulate less than the entire State unless it has a parallel State regulation. If the USDA were to regulate the entire State, there would be additional detrimental quarantine requirements directed against California host commodities by the USDA and our concerned international trade partners.

This proposed amendment of Section 3423(b) will add approximately 17 square miles to the established regulated area (approximately 74 square miles) surrounding the infestation in the Lakewood area of Los Angeles and Orange counties as the area under quarantine for Oriental fruit fly. To prevent artificial spread of the fly to noninfested areas to protect California's agricultural industry, it is necessary immediately to regulate movement of hosts that can carry the fly from, into and within the infested area and a surrounding buffer area. Therefore, it is necessary to amend this regulation to expand the quarantine area in the Lakewood area of Los Angeles and Orange counties as an emergency action.

Authority and Reference Citations

Section 3423(b):

Authority: Sections 407, 5301, 5302, and 5322, Food and Agricultural Code.

Reference: Sections 5301, 5302, and 5322, Food and Agricultural Code.

Informative Digest

Existing law provides that the Secretary may establish, maintain, and enforce such regulations as he deems necessary to protect the agricultural industry of California from the spread of pests. The Secretary may make and enforce such regulations as he deems necessary to prevent any plant or thing which is, or is liable to be, infested by or which might act as a carrier of any pest, from passing over any quarantine boundary which is established.

Section 3423. Oriental Fruit Fly Interior Quarantine.

This amendment will add approximately 17 square miles surrounding the Lakewood area of Los Angeles and Orange counties to the existing area (74 square miles) under quarantine for Oriental fruit fly. The effect of the change is to provide authority for the State to regulate movement of hosts of Oriental fruit fly from, into and within that area to prevent the artificial spread of the fly to noninfested areas to protect the public and California's agricultural industry.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3423 does not impose a mandate on local agencies or school districts, except that agricultural commissioners of counties under quarantine have a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because the Agricultural Commissioners of Los Angeles and Orange counties requested the change in regulations.

Cost Estimate

The Department has also determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.